

1 CHRISTOPHER J. KERLEY, WSBA #16489
2 Evans, Craven & Lackie, P.S.
3 818 W. Riverside, Suite 250
4 Spokane, WA 99201-0910
5 Telephone (509) 455-5200
6 Fax (509) 455-3632
7 ckerley@ecl-law.com
8 *Among Attorneys for Defendants*

9 D. R. (ROB) CASE, WSBA #34313
10 Larson Berg & Perkins PLLC
11 105 North Third Street
12 Yakima, WA 98901
13 Telephone (509) 457-1515
14 Fax (509) 457-1027
15 Rob@LBPlaw.com
16 *Among Attorneys for Defendants*

17 UNITED STATES DISTRICT COURT
18 FOR THE EASTERN DISTRICT OF WASHINGTON

19 SELAH ALLIANCE FOR EQUALITY,
20 COURTNEY HERNANDEZ, REV.
21 DONALD DAVIS JR., LAURA PEREZ,
22 ANITA CALLIHAN, KALAH JAMES,
23 CHARLOTTE TOWN, AMANDA
24 WATSON, and ANNA WHITLOCK,

25 Plaintiffs,

26 vs.

27 CITY OF SELAH; SHERRY
28 RAYMOND, in her official capacity as
29 Mayor of the City of Selah; and DONALD
30 WAYMAN, in his official capacity as City
Administrator for the City of Selah,

Defendants.

Case No. 1:20-cv-3228

ANSWER AND
AFFIRMATIVE
DEFENSES

1 Defendants CITY OF SELAH, SHERRY RAYMOND and DONALD
2 WAYMAN (collectively, “Defendants”), through their undersigned counsel,
3 answer Plaintiffs’ Complaint as follows: (ECF No.1).

4
5 I. INTRODUCTION¹
6

7 1. Defendants admit the allegations within the first two sentences of
8 paragraph 1 of the Complaint. Defendants deny the allegations within the third
9 sentence of said paragraph, both as those allegations are phrased and on the ground
10 that such allegations constitute legal conclusions. Defendants deny all allegations
11 within the fourth/final sentence of said paragraph.²
12
13
14
15
16

17
18 ¹ Defendants object generally to the lengthy “Introduction” contained in
19 Plaintiffs’ Complaint on the ground that it violates FRCP 8(a)’s requirement that
20 a complaint (claim for relief) be limited to a short and plain statement of the
21 grounds for the court’s jurisdiction, a short and plain statement of the claim
22 showing the pleader is entitled to relief, and a demand for the relief sought.
23 Without waiving the objection, in order to place the allegations contained in the
24 “Introduction” into context, Defendants have answered the same.
25
26
27

28 ² Defendants acknowledge that the words set forth at page 2, line 25 through
29 page 3, line 8 of the Complaint accurately summarize the Plaintiffs’ position.
30

1 2. Defendants deny the allegations within the first sentence of paragraph
2 2 of the Complaint. With regard to the allegations within the second/final sentence
3 of said paragraph, Defendants admit that George Floyd died in May 2020 and that
4 many people engaged in “expressive actions” following his death, with the
5 qualification that, in numerous situations throughout the nation, those “expressive
6 actions” included riots, violence, property damage, disobedience and defiance of
7 law enforcement and other criminal and immoral acts. Defendants admit that
8 Black people and people of color sometimes face discrimination in America. But
9 Defendants deny as vague and overbroad the allegation that all Black people and
10 people of color face “daily systemic injustices” in America, and Defendants
11 further allege that the phrase/concept of “systemic injustice” is vague and nebulous
12 and, accordingly, allegations of alleged “systemic racism” and “systemic
13 injustice” defy any meaningful response. Defendants deny they have inflicted any
14 injustice against any Plaintiff, any Black person, or any person of color. Finally,
15 Defendants deny that the newspaper article and polling data cited in said paragraph
16 are, individually or collectively, valid proof of anything or legally relevant in any
17 way to this case.
18
19
20
21
22
23
24
25
26
27

28 However, Defendants deny the allegations that are embedded in such summary
29 including but not limited to the notion that any “violations” have occurred.
30

1 3. With regard to the allegations within paragraph 3 of the Complaint,
2 Defendants admit that since May 2020 people have engaged in protests in Selah
3 and have marched, created chalk drawings and writings on streets and sidewalks
4 and other locations, and have submitted comments relative to City Council
5 meetings. Answering further, Defendants acknowledge that most of those protests
6 have been peaceful but allege that property damage, threats of violence and
7 criminal acts have occurred during some of the protests. Defendants deny that
8 “hundreds of residents” have participated in protests in Selah since May 2020.
9 Rather, Defendants allege that the cumulative figure is less than 200 and many,
10 and perhaps most, of the participants were not residents of the City of Selah.
11 Defendants deny that all of such chalk drawings and writings were “artwork” and
12 allege that many were profane messages, hateful messages and entirely non-
13 artistic. Defendants allege that many comments that have been submitted relative
14 to City Council meetings since May of 2020 violated the City’s established rules
15 of decorum. Finally, Defendants deny all other allegations within said paragraph
16 and deny that the chalk events have any legal relevance to this case.

17 4. Defendants deny all allegations within paragraph 4 of the Complaint.
18 Answering further, Defendants acknowledge that the City utilized a street
19 sweeper-type device to clean chalk from a City street on a few occasions since
20 May 2020 because, as a practical matter, the large scale and voluminous amount
21

1 of chalk on such street necessitated the use of that equipment. Defendants deny
2 that such device was used as a “response” to any protest, march or public
3 comment(s) submitted relative to a City Council meeting, and deny that it was
4 used because of any supposed hostility toward anyone or any message. Finally,
5 Defendants deny that the City has any hostility toward any message or any activist,
6 deny that such supposed hostility is what garnered national attention, and deny
7 that the newspaper article cited in such paragraph is legally relevant in any way to
8 this case.
9

10
11
12
13 5. Defendants presently lack sufficient information to assess the relative
14 truth or falsity of the allegations within the first sentence of paragraph 5 of the
15 Complaint. Accordingly, Defendants deny all allegations within said sentence.
16 With regard to the allegations within the second sentence of said paragraph,
17 Defendants presently lack sufficient information to assess the relative truth or
18 falsity of the allegation that S.A.F.E. is a “grassroots community-led
19 organization”. Accordingly, Defendants deny such allegation. Defendants deny
20 that the professed members of S.A.F.E. have solely sought to “spread the message
21 of anti-racism and equality throughout the City” and, instead, allege that some
22 apparent members have spread hateful messages and engaged in criminal acts.
23 Defendants deny that the City tacitly supports racial animus or antagonism, deny
24 that the City has somehow failed to protect its citizens, and deny that Defendants
25
26
27
28
29
30

1 have a legal obligation or practical capacity to ensure that no one ever experiences
2 any racial animus or antagonism. Finally, Defendants deny all allegations within
3 the third/final sentence of said paragraph and deny all other allegations within said
4 paragraph.
5

6
7 6. With regard to the allegations within paragraph 6 of the Complaint,
8 Defendants admit that professed members of S.A.F.E. have, since May 2020,
9 likely held public events, likely submitted public comments relative to City
10 Council meetings, and likely placed various types of signs at locations in Selah.
11 However, Defendants allege that S.A.F.E. is an unincorporated association that
12 has never provided Defendants with a list of its purported members and that certain
13 professed members of S.A.F.E. have made conflicting statements as to who
14 exactly is and is not a member of S.A.F.E. Answering further, Defendants deny
15 as vague the allegation that any of S.A.F.E.'s signs were, on their face, objectively
16 "anti-racism signs". Some of S.A.F.E.'s signs included the words "Black Lives
17 Matter" or the letters "BLM", but the meaning of those words and letters is not an
18 objective fact. Defendants admit that campaign-size signs calling for Defendant
19 Wayman to be fired have been placed at locations in Selah and that it is likely that
20 professed members of S.A.F.E. were the people who placed those particular
21 campaign-size signs. In addition, flyer-style signs were also placed at locations in
22 Selah that included messages accusing Defendant Wayman of being a pedophile
23
24
25
26
27
28
29
30

1 and expressing other personal attacks against and toward Defendant Wayman and
2 Defendant Raymond, and it is likely that professed members of S.A.F.E. were the
3 people who placed those flyer-style signs as well. Defendants admit that some of
4 S.A.F.E.'s campaign-size signs were placed in city-owned rights-of-way and, for
5 a brief period, were alongside and amidst actual political campaign signs in those
6 locations. However, the 2020 campaign season has concluded, all actual campaign
7 signs have since been removed, and S.A.F.E.'s campaign-size signs have
8 continued to be placed in city-owned rights-of-way. The law does not require
9 Defendants to be omnipresent and there are occasions when an improper sign,
10 whether by S.A.F.E. or someone else, is not noticed by Defendants for a period of
11 time. However, Defendants always endeavor to act consistently and whenever an
12 improper sign is discovered they promptly remove it. S.A.F.E.'s signs have not
13 been singled out for, and have not received, any selective adverse treatment from
14 Defendants. Finally, Defendants deny all other allegations within said paragraph
15 6.

16
17 7. Defendants admit the allegations within paragraph 7 of the
18 Complaint, with the qualifications that Defendant Raymond and Defendant
19 Wayman removed S.A.F.E.'s signs on only a few occasions, that the initial
20 instances when they did so occurred prior to anyone challenging the
21 constitutionality of the City's sign code, that Defendants returned to Plaintiffs all
22
23
24
25
26
27
28
29
30

1 but approximately 15 of the S.A.F.E. signs that Defendants initially removed, that
2 those approximately 15 S.A.F.E. signs were permanently disposed of by
3 Defendant Wayman prior to anyone challenging the constitutionality of the City's
4 sign code, that any S.A.F.E. signs that have been removed more recently by
5 Defendants have either been returned to Plaintiffs or are being held for Plaintiffs
6 to come and pick up, and that, in all instances, Defendants were acting based on
7 legal advice including but not limited to advice from the City's prosecuting
8 attorney. The past and continued placement of S.A.F.E.'s signs on city-owned
9 rights-of-way has and does violate the written text of Selah Municipal Code
10 Chapter 10.38. However, prior to this lawsuit being filed, the City notified
11 S.A.F.E.'s attorneys that the City would not seek to impose any penalty against
12 anyone for the past or continued placement of S.A.F.E. signs on city-owned rights-
13 of-way and that Selah would likely amend its sign code in early 2021.
14 Nevertheless, Plaintiffs filed this lawsuit. Finally, Defendants deny any liability
15 or wrongdoing.

16
17 8. With regard to the allegations within paragraph 8 of the Complaint,
18 Defendants admit that certain people raised concerns that Defendants were being
19 selective as to enforcement of the City's sign code. However, Defendants deny
20 that S.A.F.E.'s signs have ever been singled out for, or actually received, any
21 selective adverse treatment from Defendants. Continuing further, Defendants
22
23
24
25
26
27
28
29
30

1 deny that they have been selective and deny that other signs that violate the written
2 text of Selah's sign code were left untouched after Defendants actually learned of
3 the presence of those signs. Defendants admit that during one City Council
4 meeting, Defendants informed the public that signs that violate the written text of
5 Selah's sign code would continue to be removed by the City. Defendants allege
6 that when these remarks were made, no one had yet challenged the
7 constitutionality of the City's sign code and that Defendants were relying on legal
8 advice including but not limited to advice from the City's prosecuting attorney.
9 Finally, Defendants deny all other allegations within said paragraph including but
10 not limited to all allegations within the second/final sentence of said paragraph.
11
12

13
14
15
16 9. Defendants acknowledge that paragraph 9 of the Complaint
17 accurately summarizes the Plaintiffs' position. However, Defendants deny all
18 allegations embedded within such summary including but not limited to the
19 allegations that Defendants have a policy, practice and custom of silencing speech
20 that promotes racial equality, deny that the professed members of S.A.F.E. have
21 solely spoken messages of "racial equality", and deny for lack of knowledge that
22 any Plaintiff has suffered any "injury" within the meaning of the law.
23
24
25

26
27 10. Defendants admit the allegations within paragraph 10 of the
28 Complaint including but not limited to the fact that the existing text of Chapter
29 10.38 of the Selah Municipal Code constitutes an unconstitutional content-based
30

1 restriction on the placement of signs. Answering further, this is why the City is
2 planning to amend its sign code in early 2021. When the City does amend its sign
3 code, several aspects of this lawsuit will be rendered moot. Finally, with regard
4 to the allegations within the second/final sentence of said paragraph, Defendants
5 admit that they were relying upon the (now-known-to-be unconstitutional)
6 content-based restrictions within the City's sign code when they removed
7 S.A.F.E.'s signs from city-owned rights-of-way on the few occasions referenced
8 above. However, Defendants deny that such (now-known-to-be unconstitutional)
9 content-based restrictions are the reason S.A.F.E.'s signs have been removed from
10 city-owned rights-of-way more recently by any Defendant(s). Rather, recent
11 removals of S.A.F.E.'s signs by any Defendant(s) from city-owned rights-of-way
12 have occurred due to other aspects of the City's sign code that are fully
13 constitutional and that Plaintiffs do not challenge as supposedly unconstitutional.
14 After the conclusion of campaign season, no temporary signs – irrespective of
15 content – are allowed on city-owned rights-of-way under the legitimately-
16 constitutional aspects of the City's sign code and irrespective of the (now-known-
17 to-be unconstitutional) content-based restrictions.
18
19
20
21
22
23
24
25

26 11. Defendants deny all allegations within paragraph 11 of the
27 Complaint. Answering further, Defendants allege that they have never singled
28 out, or actually imposed, any selective adverse treatment on or toward S.A.F.E.'s
29
30

1 signs. Continuing further, Defendants allege that other signs that violate the
2 written text of Selah's sign code were not left untouched after Defendants actually
3 learned of the existence of those signs, that Defendants have never expressed or
4 acted upon any "open opposition to S.A.F.E.'s [professed] mission", that
5 Defendants have never "targeted" any person during an open public meeting, and
6 that Defendants have never been motivated by malicious intent or acted with
7 reckless and callous indifference to Plaintiffs' constitutional rights. To the
8 contrary, once Plaintiffs' lawyers raised constitutional objections to Selah's sign
9 code, all Defendants ceased removing S.A.F.E.'s signs from city-owned rights-of-
10 way until after the 2020 campaign season ended. It was only after the 2020
11 campaign season ended and S.A.F.E. signs continued to be placed in city-owned
12 rights-of-way that any Defendant(s) began again removing S.A.F.E.'s signs and
13 all of those recently-removed signs have either been returned to Plaintiffs or are
14 being held for Plaintiffs to come and pick up.

15
16
17
18
19
20
21
22 12. Defendants deny all allegations within paragraph 12 of the
23 Complaint. Answering further, Defendants allege that none of them has ever
24 "retaliated" against any Plaintiff or engaged in "harassment" toward any Plaintiff.
25 Defendants acknowledge that Defendant Raymond criticized the actions and
26 comments of a few people during one particular City Council meeting. However,
27 those individuals were not "Plaintiffs" at the time, their actions and comments
28
29
30

1 were deserving of criticism, and there was nothing wrong with Defendant
2 Raymond criticizing such actions and comments. Likewise, there was nothing
3 wrong about the City erasing chalk from streets, sidewalks and public buildings,
4 irrespective of whether any portion of that chalk was supposedly “art containing
5 messages in support of the Black Lives Matter movement”. Finally, there was
6 nothing wrong about Defendants refusing to publicly read aloud comments
7 submitted relative to City Council meetings when those comments violated the
8 City’s established rules of decorum.
9

10 13. With regard to the allegations within paragraph 13 of the Complaint,
11 Defendants admit that COVID-19 continues to impact the nation including
12 Yakima County. Defendants deny all other allegations in said paragraph.
13 Answering further, Defendants allege that Plaintiffs’ subjective belief that
14 something is “safer” does not actually establish or convey any special rights to
15 Plaintiffs, that the City has not made “efforts to censor S.A.F.E.’s expression”, that
16 any comments submitted by professed S.A.F.E. members that were not read aloud
17 during a City Council meeting were found to be in violation of the City’s
18 established rules of decorum, that Plaintiffs have continued to have in-person
19 gatherings and marches and meetings despite COVID-19, that Defendants have
20 not imposed any selective adverse treatment on or toward S.A.F.E.’s signs, that
21 the S.A.F.E. signs that Defendants have removed from city-owned rights-of-way
22
23
24
25
26
27
28
29
30

1 did not contain “political messages”, and that Defendants have not “encouraged
2 private citizens” to remove S.A.F.E.’s signs. Finally, Defendants deny for lack of
3 knowledge the allegations made regarding the study referenced in footnote 3.
4

5 II. PARTIES

6
7 14. Defendants presently lack sufficient information to assess the relative
8 truth or falsity of the allegations within the initial two sentences in paragraph 14
9 of the Complaint. On such basis, Defendants deny all allegations within said
10 sentences. Answering further, Defendants allege that S.A.F.E. is an
11 unincorporated association of unknown origin and composition that has never
12 provided Defendants with a list of its purported members and that certain
13 professed members of S.A.F.E. have made conflicting statements as to who
14 exactly is and is not a member of S.A.F.E. With regard to the allegations in the
15 third/final sentence of said paragraph, Defendants admit that professed members
16 of S.A.F.E. have, since May 2020, likely purchased signs and placed those signs
17 at locations in Selah, and that some of those signs have included messages that
18 personally assail Defendant Wayman. However, Defendants deny that Defendant
19 Wayman has “openly opposed allowing citizens to voice their support of the Black
20 Lives Matter movement in Selah.” To the contrary, Defendants allege there have
21 been more than 10 protests/marches in Selah since May 2020 by supporters of the
22 Black Lives Matter movement, that Defendant Wayman has not attempted to
23
24
25
26
27
28
29
30

1 prevent or disrupt any of those protests/marches, that a limited number of people
2 in Selah have also expressed their support for the Black Lives Matter movement
3 via other methods since May 2020 including but not limited to online posts and
4 in-person communications with members of the City Council and the Mayor, and
5 that Defendant Wayman has not attempted to prevent or disrupt any of those other
6 methods of speech. Finally, Defendants allege that professed members of S.A.F.E.
7 have not solely sought to “advance equality and inclusion” and, instead, allege that
8 some members have spread hateful messages and engaged in criminal acts.
9

10
11
12
13 15. Defendants acknowledge that the allegations within paragraph 15 of
14 the Complaint accurately summarize the Plaintiffs’ position. However,
15 Defendants deny that S.A.F.E. has proper legal standing to be a party to this
16 lawsuit on its own account or to act as a representative party for its professed
17 members. Defendants also deny that any Plaintiff has suffered any injury within
18 the meaning of the law.
19
20
21

22 16. Defendants presently lack sufficient information to assess the relative
23 truth or falsity of the allegations within paragraph 16 of the Complaint.
24 Accordingly, Defendants deny all allegations within said paragraph.
25

26
27 17. Defendants admit the allegations contained in the first sentence of
28 paragraph 17 of the Complaint. Defendants presently lack sufficient information
29 to assess the relative truth or falsity of the allegations within the fourth, fifth, sixth
30

1 and seventh/final sentences of said paragraph. Accordingly, Defendants deny all
2 allegations within said sentences. Defendants deny all allegations in the second
3 sentence of said paragraph. With regard to the allegations within the third sentence
4 of said paragraph, Defendants admit that the City of Selah's then-Chief of Police
5 sent a letter in June 2020 to the house where Plaintiff Laura Perez resides.
6
7 However, Defendants deny Plaintiffs' characterization of such letter and allege
8 that the letter effectively speaks for itself. Answering further, Defendants allege
9 that any alleged artistic quality of chalk drawings in a public street is legally
10 irrelevant and that creation of the chalk drawings in the public street near Plaintiff
11 Laura Perez' house constituted an illegal act. Finally, Defendants allege that
12 Plaintiff Perez' alleged subjective beliefs have no legal relevance to this case.
13
14
15
16

17 18. Defendants admit the allegations within the first sentence of
18 paragraph 18 of the Complaint. Defendants presently lack sufficient information
19 to assess the relative truth or falsity of the allegations within the remaining
20 sentences of said paragraph. Accordingly, Defendants deny all allegations within
21 said sentences. Answering further, Defendants allege that what allegedly
22 "resonated" with Plaintiff Anita Callahan has no legal relevance to this case.
23
24
25
26

27 19. Defendants presently lack sufficient information to assess the relative
28 truth or falsity of the allegations within paragraph 19 of the Complaint.
29 Accordingly, Defendants deny all allegations within said paragraph. Answering
30

1 further, the subjective beliefs and feeling of the Plaintiffs, including whether any
2 issue is “particularly important” to Plaintiff Kalah James and how she “feels” and
3 what she is allegedly “concerned” about are of no legal relevance to this case.
4 Finally, Defendants deny the embedded allegation within the final sentence of
5 paragraph 19 because the City has not had, or acted upon, any “determination to
6 quash messages of equality”.

7
8
9
10 20. Defendants presently lack sufficient information to assess the relative
11 truth or falsity of the allegations within paragraph 20 of the Complaint.
12 Accordingly, Defendants deny all allegations within said paragraph. Answering
13 further, Defendants allege that Plaintiff Donald J. Davis Jr.’s subjective feelings
14 and beliefs have no legal relevance to this case. Likewise, without in any way
15 discounting or diminishing Plaintiff Davis’ memories and experiences growing up
16 in New Orleans, they have no legal relevance to this case.

17
18
19
20 21. Defendants presently lack sufficient information to assess the relative
21 truth or falsity of the allegations within the first, second, third, fourth, and
22 seventh/final sentences in paragraph 21 of the Complaint. Accordingly,
23 Defendants deny all allegations within said paragraph. With regard to the
24 allegations within the fifth and sixth sentences of said paragraph, Defendants
25 admit that Plaintiff Charlotte Town met with Defendant Raymond on one occasion
26 and also met with City Council members Russ Carlson and Jacquie Matson on
27
28
29
30

1 multiple occasions. Answering further, Defendants allege that Plaintiffs alleged
2 subjective intentions and concerns have no legal relevance to this case. Finally,
3 Defendants deny the embedded allegation within the seventh/final sentence of said
4 paragraph because the City has neither attempted to silence S.A.F.E. nor attempted
5 to eliminate messages in support of racial equality.
6
7

8 22. Defendants presently lack sufficient information to assess the relative
9 truth or falsity of the allegations within paragraph 22 of the Complaint.
10 Accordingly, Defendants deny all allegations within said paragraph. Answering
11 further, Defendants allege that the Plaintiffs' alleged subjective motives have no
12 legal relevance to this case.
13
14

15 23. Defendants admit the allegations in the first sentence of paragraph 23
16 of the Complaint. Defendants presently lack sufficient information to assess the
17 relative truth or falsity of the allegations within the remaining sentences of said
18 paragraph. Accordingly, Defendants deny all allegations within said remaining
19 sentences. Answering further, Defendants allege that the alleged subjective
20 impact of S.A.F.E.'s purported message has no legal relevance to this case.
21
22

23 24. Defendants admit the allegations within paragraph 24 of the
24 Complaint.
25
26

27
28
29 25. Defendants admit the allegations within paragraph 25 of the
30

1 Complaint.

2 26. Defendants admit the allegations within paragraph 26 of the
3
4 Complaint.

5 27. Defendants mostly admit the allegations within paragraph 27 of the
6
7 Complaint, provided, however, that they deny that any Plaintiff has been
8 “deprived” of any rights.

9
10 28. Defendants admit the allegations within paragraph 28 of the
11
12 Complaint.

13 29. Defendants mostly admit the allegations within paragraph 29 of the
14
15 Complaint, provided, however, that they deny that many of the alleged “events”
16 actually occurred.

17 30. With regard to the allegations within paragraph 30 of the Complaint,
18
19 Defendants admit that George Floyd died while in police custody in Minneapolis
20
21 in May 2020, that the other individuals mentioned in said paragraph preceded Mr.
22
23 Floyd in death, that many people engaged in protests and demonstrations and
24
25 mourning following Mr. Floyd’s death, and that much of such has occurred under
26
27 the name of Black Lives Matter. Answering further, Defendants allege that in
28
29 numerous situations throughout the nation, this “activism and community
30
expression” included riots, violence, property damage, disobedience and defiance
of law enforcement and other criminal and immoral acts. Defendants also deny

1 the sweeping allegation that all of the named individuals were “victims” because
2 the word, as used, is overbroad, argumentative, and ignores the specific facts and
3 circumstances of each individual’s interaction with law enforcement.³
4

5 31. With regard to the allegations within the first sentence of paragraph
6
7 31 of the Complaint, Defendants admit that since May 2020 people have engaged
8 in protests in Selah and that most of such protests have been peaceful. However,
9
10 Defendants allege that property damage, threats of violence and criminal acts have
11 occurred during some of the protests. Defendants deny that “hundreds of
12 residents” have participated in protests in Selah since May 2020. Rather,
13
14 Defendants allege that the cumulative figure is less than 200 and many, and
15 perhaps most, of them are not residents of the City of Selah. With regard to the
16
17 allegations within the second/final sentence of said paragraph, Defendants admit
18
19 that a march occurred in Selah on June 6, 2020, and that it is likely that Plaintiff
20
21

22 ³ With regard to the allegations within subheading “A.” on page 12 of the
23
24 Complaint, Defendants admit that some professed members of the Black Lives
25 Matter movement have expressed messages of anti-racism. However, Defendants
26
27 deny that professed members in Selah have solely expressed messages of anti-
28 racism and allege that some have expressed hateful messages and engaged in
29
30 criminal acts.

1 Hernandez and a friend organized and participated in such march. Defendants
2 presently lack sufficient information to assess the relative truth or falsity of the
3 allegations within the third sentence of said paragraph. Accordingly, Defendants
4 deny all allegations within said sentence. With regard to the allegations within the
5 fourth/final sentence of said paragraph, Defendants admit that multiple
6 demonstrations have occurred in Selah. However, Defendants deny that
7 demonstrations have occurred each week and deny that the demonstrations solely
8 spoke out against systemic racism or police brutality. Defendants allege that some
9 demonstrators have spoken profane messages, hateful messages and messages that
10 have nothing to do with so-called systemic racism or police brutality. Defendants
11 further allege that the phrase/concept of “systemic injustice” is vague, nebulous,
12 and undefined, and, as such, defies a meaningful response. Finally, Defendants
13 deny that the newspaper article cited in footnote 4 to said paragraph is legally
14 relevant in any way.⁴

22 32. With regard to the allegations within paragraph 32 of the Complaint,
23 Defendants deny Plaintiffs’ characterization of such Facebook post and allege that
24 the Facebook post effectively speaks for itself. Answering further, Defendants
25

28 ⁴ Defendants deny the allegations within subheading “B.” on page 13 of the
29 Complaint.
30

1 deny that the Facebook post by Yakima Assistant Mayor Holly Cousens accurately
2 summarized Defendant Wayman's remarks, deny that such post has any legal
3 relevance to this case, and deny that the remarks by Defendant Wayman addressed
4 within such Facebook post have any legal relevance to this case. Defendants
5 further allege that Defendant Wayman's remarks were his personal opinions and
6 that he was not speaking on behalf of the other Defendants. Finally, Defendants
7 deny that the newspaper article cited within said paragraph is legally relevant in
8 any way.
9

10
11
12
13 33. With regard to the allegations within paragraph 33 of the Complaint,
14 Defendants deny Plaintiffs' characterization of such Facebook post and allege that
15 the Facebook post effectively speaks for itself. Answering further, Defendants
16 deny that the Facebook post by Selah City Councilmember Kevin Wickenhagen
17 is legally relevant in any way to this case.
18

19
20
21 34. With regard to the allegations within paragraph 34 of the Complaint,
22 Defendants admit that a small number of Selah residents have voiced support of
23 the Black Lives Matter movement, that some of them have created chalk drawings
24 and writings on streets and sidewalks and other locations, and that City employees
25 have washed chalk away from City streets and sidewalks including via the use of
26 a pressure washer on a few occasions. However, Defendants deny that the City
27 has ever publicly opposed the Black Lives Matter movement, deny that all or even
28
29
30

1 most Selah citizens support such movement, deny that all of the chalk drawings
2 and writings were “artwork” and allege that many were profane messages, hateful
3 messages and entirely non-artistic. Defendants also deny that the supposed
4 “artistic quality” of the chalk drawings and writings has any legal relevance to this
5 case, deny they refused to have discussions with Plaintiffs, deny that they have a
6 legal duty to “embrace” the message of any group including Plaintiffs’, and deny
7 that the pressure washer was used as a “response” to the content of any chalk
8 drawings and writings and, rather, allege it was used simply for its utility as a
9 cleaning implement. Finally, Defendants deny that the chalk drawings and
10 writings are legally relevant in any way in this case.
11
12
13
14
15

16 35. With regard to the allegations within the first sentence of paragraph
17 35 of the Complaint, Defendants presently lack sufficient information to assess the
18 relative truth or falsity of whether Plaintiff Perez personally witnessed the City
19 clean away chalk from its streets and sidewalks. Accordingly, Defendants deny
20 such allegation. Defendants deny that all of the chalk drawings and writings were
21 “artwork” and allege that many were profane messages, hateful messages and
22 entirely non-artistic. Defendants also deny that the chalk writings and drawings
23 are legally relevant in any way to this case. With regard to the allegations within
24 the second sentence of said paragraph, Defendants admit that the City of Selah’s
25 then-Chief of Police sent a letter in June 2020 to the house where Plaintiff Laura
26
27
28
29
30

1 Perez resides. However, Defendants deny that such letter has any legal relevance
2 to this case, deny Plaintiffs' characterization of such letter and allege that the letter
3 effectively speaks for itself. With regard to the allegations within the third/final
4 sentence of said paragraph, Defendants admit that Plaintiffs' counsel sent a letter
5 to the City. However, Defendants deny Plaintiffs' characterization of such letter
6 and allege that the letter effectively speaks for itself. Answering further,
7 Defendants deny that the City Attorney "threatened" to criminally prosecute
8 anyone. To the contrary, Defendants allege that every letter authored by the City
9 Attorney on the topic of chalk expressly stated that the City did not want to
10 prosecute anyone for criminal acts related to chalk, while still accurately
11 explaining why and how creating chalk drawings or writings on City streets
12 constitutes criminal mischief.

13
14
15
16
17
18
19 36. With regard to the allegations within the first sentence of paragraph
20 36 of the Complaint, Defendants admit that supporters of the Black Lives Matter
21 movement have caused, and exacerbated, tension in Selah. However, Defendants
22 deny that public comments by City officials were the cause of such tension.
23 Rather, Defendants allege that certain local members of such movement are, and
24 for a period of years have been, consumed with personal animus for and toward
25 the Defendants and that those persons are using S.A.F.E., in whole or in part, as a
26 vehicle for the expression of that personal animus. With regard to the allegations
27
28
29
30

1 within the second and third/final sentences of said paragraph, Defendants deny
2 Plaintiffs' characterization of Defendant Wayman's remarks and allege that those
3 remarks effectively speak for themselves. Answering further, Defendants deny
4 that Defendant Wayman called all members of the Black Lives Matter movement
5 "devoid of intellect and reason" and deny that he characterized all members as a
6 "mob". Rather, Defendants allege that those remarks by Defendant Wayman were
7 directed toward a small subset of people and that his remarks were his personal
8 opinions based on his research into the genesis, beliefs, motives and methods of
9 Black Lives Matter as an organization and that he was not speaking on behalf of
10 the other Defendants at the time. Defendants allege that recent events in places
11 like Seattle (and Portland) have not merely been "a series of protests" and allege
12 that those events have not merely led to "confrontations" with police. To the
13 contrary, repeated and significant riots, violence, property damage, disobedience
14 and defiance of law enforcement and other criminal acts have recently occurred in
15 places like Seattle (and Portland), and those events have resulted in multiple
16 deaths, numerous injured police officers, the destruction of property and other
17 devastating consequences. Finally, Defendants deny that the newspaper articles
18 cited in said paragraph are, individually or collectively, legally relevant in any way
19 to this case.
20
21
22
23
24
25
26
27
28
29
30

1 37. With regard to the allegations within paragraph 37 of the Complaint,
2 Defendants deny that the City has ever suppressed speech in Selah. Defendants
3 presently lack sufficient information to assess the relative truth or falsity of the
4 remaining allegations within said paragraph. On such basis, Defendants deny all
5 such allegations. Answering further, Defendants allege that professed members
6 of S.A.F.E. have not solely tried to make Selah “a more inclusive and equitable
7 community for all of its residents” and allege that some members have spread
8 hateful messages and engaged in criminal acts.⁵
9
10
11
12

13 38. Defendants presently lack sufficient information to assess the relative
14 truth or falsity of the remaining allegations within paragraph 38 of the Complaint.
15 Accordingly, Defendants deny all such allegations. Answering further,
16 Defendants allege that professed members of S.A.F.E. have not solely tried to
17 make Selah “a safe place” and allege that some members have spread hateful
18 messages and engaged in criminal acts.
19
20
21
22

23
24 ⁵ With regard to the allegations within subheading “C.” on page 15 of the
25 Complaint, Defendants deny that the City has engaged in “repeated acts of
26 censorship”. Defendants presently lack sufficient information to assess the
27 relative truth or falsity of the remaining allegations within such subheading, and
28 on that basis Defendants deny all such remaining allegations.
29
30

1 39. With regard to the allegations within paragraph 39 of the Complaint,
2 Defendants admit that professed members of S.A.F.E., on or about June 13, 2020,
3 delivered a lengthy list to the City. However, Defendants deny Plaintiffs'
4 characterization of the list and allege that the list effectively speaks for itself.
5 Answering further, Defendants deny that such list was presented as "a set of goals
6 and objectives" and instead allege that the list was presented as a set of demands.
7 Defendants deny that the City is racist, deny that the City had any legal obligation
8 to meet any of the demands, deny that the City needs to become more "anti-racist",
9 particularly because the phrase/concept of "anti-racist" is vague, nebulous and
10 undefined and, as such, defies any meaningful response.
11

12 40. Defendants presently lack sufficient information to assess the relative
13 truth or falsity of the allegations within paragraph 40 of the Complaint.
14 Accordingly, Defendants deny all allegations within said paragraph.
15

16 41. With regard to the allegations within the first sentence of paragraph
17 41 of the Complaint, Defendants admit that it is likely that professed members of
18 S.A.F.E. designed and purchased campaign-size signs on or about August 10,
19 2020. However, Defendants allege that S.A.F.E. is an unincorporated association
20 that has never provided Defendants with a list of its purported members and that
21 certain professed members of S.A.F.E. have made conflicting statements as to who
22 exactly is and is not a member of S.A.F.E. Answering further, Defendants deny
23
24
25
26
27
28
29
30

1 that all of S.A.F.E.'s signs "communicate[d] messages of equality". Defendants
2 admit that some of S.A.F.E.'s signs included the words "Black Lives Matter" or
3 the letters "BLM", but the meaning and message of those words and letters is
4 vague highly subjective and not an objective fact. Also, many of S.A.F.E.'s signs
5 have included the message of "Fire Don Wayman", which is objectively not a
6 message of equality. Defendants admit the allegations within the second, third
7 and fourth sentences of said paragraph. With regard to the allegations within the
8 fifth sentence of said paragraph, Defendants admit that the content of S.A.F.E.'s
9 signs was changed at some point and admit that it is possible that such occurred in
10 October 2020. Finally, Defendants admit the allegations within the sixth/final
11 sentence of said paragraph and also admit that the photographs set forth on pages
12 17 and 18 of the Complaint are fair and accurate representations of some of
13 S.A.F.E.'s signs.

20 42. Defendants presently lack sufficient information to assess the relative
21 truth or falsity of the allegations within paragraph 42 of the Complaint.
22 Accordingly, Defendants deny all allegations within said paragraph.

25 43. With regard to the allegations within paragraph 43 of the Complaint,
26 Defendants admit that some of S.A.F.E.'s signs were placed in city-owned rights-
27 of-way on or about August 20, 2020, and admit that it is likely that professed
28 members of S.A.F.E. placed such signs on such date. However, Defendants allege
29
30

1 that S.A.F.E. is an unincorporated association that has never provided Defendants
2 with a list of its purported members and that certain professed members of
3 S.A.F.E. have made conflicting statements as to who exactly is and is not a
4 member of S.A.F.E.
5

6
7 44. With regard to the allegations within paragraph 44 of the Complaint,
8 Defendants admit that some of S.A.F.E.'s campaign-size signs were placed in city-
9 owned rights-of-way and, for a brief period, were alongside and amidst actual
10 campaign signs in those locations. However, the 2020 campaign season has
11 concluded, all actual campaign signs have since been removed, and S.A.F.E.'s
12 campaign-size signs have continued to be placed in city-owned rights-of-way. The
13 law does not require Defendants to be omnipresent and there are occasions when
14 an improper sign, whether by S.A.F.E. or someone else, is not noticed by
15 Defendants for a period of time. However, Defendants always endeavor to act
16 consistently and whenever an improper sign is discovered they promptly remove
17 it. S.A.F.E.'s signs have not been singled out for, and have not received, any
18 selective adverse treatment from Defendants. Defendants deny all other
19 allegations within said paragraph.
20
21

22 45. Defendants deny all allegations within paragraph 45 of the
23 Complaint. Answering further, Defendants allege that the first time or perhaps
24 first couple times in 2020 that City public works employees removed S.A.F.E.'s
25
26
27
28
29
30

1 signs from city-owned rights-of-way they did so without any specific direction
2 from Defendant Wayman, Defendant Raymond or any other management-level
3 City employee. Rather, such public works employees removed the signs pursuant
4 to preexisting policy, that was established prior to 2020 and thus prior to S.A.F.E.
5 coming into existence, because the employees were relying upon and seeking to
6 uphold the (now-known-to-be unconstitutional) content-based restrictions within
7 the City's sign code. Subsequently, Defendant Wayman directed the public works
8 employees to cease removing the signs and to instead rely on Defendant Wayman
9 to remove the signs. Defendant Wayman gave this direction so that no public
10 works employee(s) would face personal backlash or retaliation. This occurred
11 prior to anyone challenging the constitutionality of the City's sign code.
12

13
14 Later, once Plaintiffs' lawyers raised constitutional objections to Selah's
15 sign code, all Defendants ceased removing S.A.F.E.'s signs from city-owned
16 rights-of-way until after the 2020 campaign season ended and the City formally
17 notified Plaintiffs' lawyers that the City would not seek to enforce the sign code
18 against S.A.F.E.'s signs during the 2020 campaign season and would amend its
19 sign code in early 2021. It was only after the 2020 campaign season ended and
20 S.A.F.E. signs continued to be placed in city-owned rights-of-way that any
21 Defendant(s) began again removing S.A.F.E.'s signs and all of those recently-
22 removed signs have either been returned to Plaintiffs or are being held for
23
24
25
26
27
28
29
30

1 Plaintiffs to come and pick up.

2 46. With regard to the allegations in paragraph 46 of the Complaint,
3
4 Defendants admit that the S.A.F.E. signs that were removed by public works
5 employees from city-owned rights-of-way on the initial one or two occasions were
6 brought back to the public works office and later returned to Plaintiff Whitlock.
7
8 Defendants deny the remaining allegations within said paragraph.
9

10 47. Defendants admit the allegations within paragraph 47 of the
11 Complaint. Answering further, Defendants allege that the few instances where
12 Defendant Wayman removed S.A.F.E.'s signs from city-owned rights-of-way
13 occurred prior to anyone challenging the constitutionality of the City's sign code.
14
15 Later, once Plaintiffs' lawyers raised constitutional objections to Selah's sign
16 code, all Defendants ceased removing S.A.F.E.'s signs from city-owned rights-of-
17 way until after the 2020 campaign season ended and the City formally notified
18 Plaintiffs' lawyers that the City would not seek to enforce the sign code against
19 S.A.F.E.'s signs during the 2020 campaign season and would amend its sign code
20 in early 2021. It was only after the 2020 campaign season ended and S.A.F.E.
21 signs continued to be placed in city-owned rights-of-way that any Defendant(s)
22 began again removing S.A.F.E.'s signs and all of those recently-removed signs
23 have either been returned to Plaintiffs or are being held for Plaintiffs to come and
24 pick up.
25
26
27
28
29
30

1 48. Defendants admit the allegations within paragraph 48 of the
2 Complaint. Answering further, Defendants allege that the instance where
3 Defendant Raymond removed S.A.F.E.'s signs from city-owned rights-of-way
4 occurred prior to anyone challenging the constitutionality of the City's sign code.
5 Later, once Plaintiffs' lawyers raised constitutional objections to Selah's sign
6 code, all Defendants ceased removing S.A.F.E.'s signs from city-owned rights-of-
7 way until after the 2020 campaign season ended and the City formally notified
8 Plaintiffs' lawyers that the City would not seek to enforce the sign code against
9 S.A.F.E.'s signs during the 2020 campaign season and would amend its sign code
10 in early 2021. It was only after the 2020 campaign season ended and S.A.F.E.
11 signs continued to be placed in city-owned rights-of-way that any Defendant(s)
12 began again removing S.A.F.E.'s signs and all of those recently-removed signs
13 have either been returned to Plaintiffs or are being held for Plaintiffs to come and
14 pick up.
15
16
17
18
19
20
21

22 49. With regard to the allegations within paragraph 49 of the Complaint,
23 Defendants deny Plaintiffs' characterization of Defendant Wayman and Defendant
24 Raymond's remarks at City Council meetings.
25

26 50. Defendants deny the allegations within the first sentence of paragraph
27 50 of the Complaint. With regard to the allegations within the remaining sentences
28 of said paragraph, Defendants deny Plaintiffs' characterization of remarks by
29
30

1 Defendant Wayman and allege that his remarks about signs were in the context of
2 Defendants' good-faith belief about the constitutionality of the City's sign code.
3
4 Answering further, Defendants allege that in all instances Defendant Wayman was
5 acting based on legal advice including but not limited to advice from the City's
6 prosecuting attorney. Prior to anyone challenging the constitutionality of the
7 City's sign code, the City's prosecuting attorney issued an explanatory
8 memorandum saying that signs that were improperly placed in city-owned rights-
9 of-way, including but not limited to S.A.F.E.'s signs, were the legal equivalent of
10 litter.
11
12
13

14 51. Defendants deny the allegations within paragraph 51 of the
15 Complaint.
16

17 52. With regard to the allegations within paragraph 52 of the Complaint,
18 Defendants admit that prior to anyone challenging the constitutionality of the
19 City's sign code, the City asserted that the placement of S.A.F.E.'s signs within
20 city-owned rights-of-way during the 2020 campaign season violated the written
21 text of Selah Municipal Code Chapter 10.38. Answering further, however, prior
22 to this lawsuit being filed, the City notified S.A.F.E.'s attorneys that the City
23 would not seek to impose any penalty against anyone for the past or continued
24 placement of S.A.F.E. signs on city-owned rights-of-way and that Selah would
25 likely amend its sign code in early 2021. Nevertheless, Plaintiffs filed this lawsuit.
26
27
28
29
30

1 Finally, Defendants deny any liability or wrongdoing.

2 53. With regard to the allegations within paragraph 53 of the Complaint,
3 Defendants deny Plaintiffs' characterization of Selah Municipal Code Chapter
4 10.38 and allege that such Chapter effectively speaks for itself.
5

6 54. Defendants admit the allegations within paragraph 54 of the
7 Complaint.
8

9 55. With regard to the allegations within paragraph 55 of the Complaint,
10 Defendants deny Plaintiffs' characterization of Selah Municipal Code Chapter
11 10.38 and allege that such Chapter effectively speaks for itself.
12

13 56. With regard to the allegations within paragraph 56 of the Complaint,
14 Defendants deny Plaintiffs' characterization of Selah Municipal Code Chapter
15 10.38 and allege that such Chapter effectively speaks for itself.
16

17 57. With regard to the allegations within paragraph 57 of the Complaint,
18 the Defendants deny the Plaintiffs' characterization of Selah Municipal Code
19 Chapter 10.38 and allege that such Chapter effectively speaks for itself.
20

21 58. Defendants deny the allegations within paragraph 58 of the
22 Complaint.
23

24 59. Defendants admit the allegations within paragraph 59 of the
25 Complaint.
26

1 60. Defendants admit the allegations within paragraph 60 of the
2 Complaint.

3
4 61. Defendants admit the allegations within paragraph 61 of the
5 Complaint.

6
7 62. Defendants admit the allegations within paragraph 62 of the
8 Complaint.

9
10 63. Defendants deny the allegations within the first sentence of paragraph
11 63 of the Complaint. By contrast, Defendants admit the allegations within the
12 remaining sentences of said paragraph.

13
14 64. Defendants deny the allegations within the first sentence of paragraph
15 64 of the Complaint. With regard to the allegations within the second/final
16 sentence of said paragraph, Defendants admit that they have not offered to pay
17 compensation to Plaintiff Whitlock. Defendants deny they have ever possessed
18 the 63 signs that Plaintiff Whitlock claims went missing, deny that they have any
19 liability due to such signs supposedly going missing, and deny that any Plaintiff
20 ever asked for compensation prior to filing this lawsuit.
21
22
23
24

25 65. Defendants deny the allegations within paragraph 65 of the
26 Complaint.

27
28 66. With regard to the allegations within paragraph 66 of the Complaint,
29 Defendants deny Plaintiffs' characterization of the remarks by Council-member
30

1 Suzanne Vargas and allege that such remarks effectively speak for themselves.
2 Answering further, Defendants allege that just because Council-member Vargas
3 may have expressed an opinion does not mean her opinion has any factual
4 accuracy or legal significance. Defendants further allege that Council-member
5 Vargas' opinions must be viewed in the context of her willingness to repeatedly
6 meet with members of S.A.F.E. and her refusal to ever meet with Defendant
7 Wayman or ever return any of his telephone messages, which suggest that she is a
8 political ally of S.A.F.E. and/or that she bears a personal animus against Defendant
9 Wayman.
10
11
12
13

14 67. With regard to the allegations within paragraph 67 of the Complaint,
15 Defendants deny Plaintiffs' characterization of the remarks by Council-member
16 Russell Carlson and allege that such remarks effectively speak for themselves.
17 Answering further, Defendants allege that just because Council-member Carlson
18 may have expressed an opinion does not mean his opinion has any factual accuracy
19 or any legal significance. Defendants further allege that Council-member
20 Carlson's opinion(s) must be viewed in context of his willingness to repeatedly
21 meet with members of S.A.F.E. and his repeated efforts, including before SA.F.E.
22 came into existence, to get Defendant Wayman fired from his position.
23
24
25
26
27

28 68. Defendants deny the allegations within the first sentence of paragraph
29 68 of the Complaint. With regard to the allegations within the remaining sentences
30

1 of said paragraph, Defendants deny Plaintiffs' characterization of the remarks by
2 Defendant Raymond and allege that such remarks effectively speak for
3 themselves.
4

5 69. Defendants admit the allegations within the first sentence of
6 paragraph 69 of the Complaint. With regard to the allegations within the
7 remaining sentences of said paragraph, Defendants deny Plaintiffs'
8 characterization of the remarks by Defendant Wayman and allege that such
9 remarks effectively speak for themselves.
10
11

12 70. Defendants deny the allegations within paragraph 70 of the
13 Complaint.
14

15 71. With regard to the allegations within paragraph 71 of the Complaint,
16 Defendants admit that Defendant Raymond has met with professed members of
17 S.A.F.E. on two occasions. However, Defendants allege that S.A.F.E. is an
18 unincorporated association that has never provided Defendants with a list of its
19 purported members and that certain professed members of S.A.F.E. have made
20 conflicting statements as to who exactly is and is not a member of S.A.F.E.
21 Finally, Defendants deny the remaining allegations within said paragraph.
22
23
24
25

26 72. With regard to the allegations within paragraph 72 of the Complaint,
27 Defendants deny Plaintiffs' characterization of such letter from Plaintiffs' lawyers
28 and allege that it effectively speaks for itself. Answering further, Defendants
29
30

1 allege that just because such letter expressed certain opinions does not mean such
2 opinions have any factual accuracy or legal significance. Moreover, such letter
3 repeatedly focused on irrelevant issues, sought to confuse the issues, and was
4 largely a political statement/effort. Finally, Plaintiffs ignore the responsive letters
5 that were issued by the City's attorney and also in-person and telephonic
6 discussions that occurred between the City's attorney and Plaintiffs' lawyers.
7
8
9

10 73. Defendants deny the allegations within paragraph 73 of the
11 Complaint. Answering further, Defendants allege they engaged in discussions
12 with Plaintiffs' lawyers including via the exchange of letters between the City's
13 attorney and said lawyers and also via in-person and telephonic discussions.
14
15

16 74. With regard to the allegations within paragraph 74 of the Complaint,
17 Defendants deny Plaintiffs' characterization of such letter from Plaintiffs' lawyers
18 and allege that it effectively speaks for itself. Answering further, Defendants
19 allege that just because such letter expressed certain opinions does not that such
20 opinions had any factual accuracy or legal significance. Moreover, said letter
21 repeatedly focused on irrelevant issues, sought to confuse the issues, and was
22 largely a political statement/effort. Finally, Plaintiffs ignore responsive letters that
23 were issued by the City's attorney and also in-person and telephonic discussions
24 that occurred between the City's attorney and Plaintiffs' lawyers.
25
26
27
28
29
30

1 75. With regard to the allegations within paragraph 75 of the Complaint,
2 Defendants deny Plaintiffs' characterization of such letter from Plaintiffs' lawyers
3 and allege that it effectively speaks for itself.
4

5 76. With regard to the allegations within paragraph 76 of the Complaint,
6 Defendants deny Plaintiffs' characterization of such letter from Plaintiffs' lawyers
7 and allege that it effectively speaks for itself.
8
9

10 77. With regard to the allegations within paragraph 77 of the Complaint,
11 Defendants deny Plaintiffs' characterization of such letter from Plaintiffs' lawyers
12 and allege that it effectively speaks for itself.
13

14 78. With regard to the allegations within paragraph 78 of the Complaint,
15 Defendants deny Plaintiffs' characterization of such letter from Plaintiffs' lawyers
16 and allege that it effectively speaks for itself. Answering further, Defendants
17 allege that such letter did not ask Defendants to "provide compensation" to
18 Plaintiffs.
19
20
21

22 79. With regard to the allegations within paragraph 79 of the Complaint,
23 Defendants deny Plaintiffs' characterization of such letter from Plaintiffs' lawyers
24 and allege that it effectively speaks for itself. Answering further, Defendants deny
25 that the cited MRSC bulletin is valid proof of anything legally relevant in this case.
26
27

28 80. With regard to the allegations within paragraph 80 of the Complaint,
29 Defendants admit that the City's attorney directed City personnel to cease
30

1 removing S.A.F.E.'s signs for the remainder of the 2020 campaign season.
2 Answering further, Defendants allege that Defendant Wayman also gave a similar
3 direction to City personnel. Finally, Defendants deny that they had any legal duty
4 to meet S.A.F.E.'s demands.
5

6
7 81. Defendants admit the allegations within the first sentence of
8 paragraph 81 of the Complaint. Answering further, Defendants deny that
9 Defendant Raymond was obligated to issue any sort of notice to Selah residents
10 simply because Plaintiffs' lawyers demanded such. With regard to the allegations
11 within the second and third sentences of said paragraph, Defendants deny
12 Plaintiffs' characterization of such remarks by the City's attorney and allege that
13 such remarks effectively speak for themselves. Answering further, Defendants
14 allege that the City's attorney expressly said, to the public, that the City was not
15 encouraging anyone to remove any signs and that the word "encourage" (or its
16 derivative) was used because that is the word (or a derivative of it) that had been
17 used in the letter from Plaintiffs' lawyers. Finally, Defendants deny the allegations
18 within the fourth/final sentence of said paragraph, deny that when a private citizen
19 removes a S.A.F.E. sign from city-owned rights-of-way that such action
20 constitutes "stealing", and deny that any Defendant has ever encouraged any
21 private citizen to remove S.A.F.E.'s signs.
22
23
24
25
26
27
28
29
30

1 82. With regard to the allegations within the first sentence of paragraph
2 82 of the Complaint, Defendants deny that any private citizen has ever removed
3 signs at the City's behest (*i.e.*, the alleged "behavior"). Defendants presently lack
4 sufficient information to assess the relative truth or falsity of the allegations within
5 the second/final sentence of said paragraph. Accordingly, Defendants deny all
6 allegations within such sentence.
7

8
9
10 83. With regard to the allegations within paragraph 83 of the Complaint,
11 Defendants admit that the City has not yet revised its sign code. However,
12 Defendants deny that the City has not indicated it plans to revise its sign code.
13 Answering further, Defendants allege that the City's attorney sent a letter to
14 Plaintiffs' lawyers, prior to this lawsuit being filed, indicating that the City planned
15 on amending its sign code in early 2021 and also saying that the City would not
16 seek to impose any penalty against anyone for violating the existing text of the
17 City's sign code. Plaintiffs and their lawyers refused to wait and instead filed this
18 lawsuit.
19

20
21
22 84. With regard to the allegations within paragraph 84 of the Complaint,
23 Defendants admit that they have not paid compensation to S.A.F.E. However,
24 Defendants deny that S.A.F.E. ever asked for any compensation prior to filing this
25 lawsuit, deny that the Defendants have failed to provide an accounting of the
26 approximately 15 signs that the Defendants disposed of, deny that S.A.F.E. has
27
28
29
30

1 suffered any harm or has legal standing to sue, deny that 275 signs were disposed
2 of by the City, and deny that the value of S.A.F.E's signs is \$3,199.10.

3
4 85. Defendants deny the allegations within paragraph 85 of the
5 Complaint.

6
7 86. Paragraph 86 of the Complaint does not advance any new factual
8 allegations. It merely incorporates by reference the allegations from paragraphs 1
9 through 85 of the Complaint. Thus, Defendants likewise incorporate the substance
10 of their answers set forth in paragraphs 1 through 85 of this pleading as if those
11 paragraphs were fully repeated within this paragraph 86.
12

13
14 87. Defendants deny the allegations within paragraph 87 of the
15 Complaint.
16

17 88. With regard to the allegations within paragraph 88 of the Complaint,
18 Defendants admit that certain aspects of the existing text of Chapter 10.38 of the
19 Selah Municipal Code constitutes an unconstitutional content-based restriction on
20 the placement of signs. Answering further, that is why the City is planning to
21 amend its sign code in early 2021. When the City does amend its sign code, that
22 will moot several aspects of this lawsuit. Finally, Defendants deny that they have
23 "enforced" any unconstitutional aspect of the City's sign code against any Plaintiff
24 since the date that the Plaintiffs' lawyers first raised constitutional challenges to
25 certain aspects of such code.
26
27
28
29
30

1 89. With regard to the allegations within paragraph 89 of the Complaint,
2 Defendants deny Plaintiffs' characterization of the City's sign code and allege that
3 such code effectively speaks for itself.
4

5 90. With regard to the allegations within paragraph 90 of the Complaint,
6 Defendants deny Plaintiffs' characterization of the City's sign code and allege that
7 such code effectively speaks for itself.
8
9

10 91. Defendants admit the allegations within paragraph 91 of the
11 Complaint.
12

13 92. Defendants admit the allegations within paragraph 92 of the
14 Complaint.
15

16 93. Defendants admit the allegations within the first and second
17 sentences of paragraph 93 of the Complaint. By contrast, however, Defendants
18 deny the allegations within the third/final sentence of said paragraph.
19

20 94. Defendants deny the allegations within paragraph 94 of the
21 Complaint. Answering further, Defendants allege that such allegations have no
22 relevance to this case.
23
24

25 95. With regard to the allegations within paragraph 95 of the Complaint,
26 Defendants admit that the initial reason why City personnel removed S.A.F.E.'s
27 from city-owned rights-of-way was because signs violated the written text of
28 Selah's sign code. By contrast, however, Defendants deny that any Defendant has
29
30

1 suppressed Plaintiffs' speech, deny that any Defendant has acted in deliberate
2 indifference to any Plaintiff's rights, and deny that all aspects of the City's sign
3 code are unconstitutional.
4

5 96. With regard to the allegations within paragraph 96 of the Complaint,
6 Defendants admit that the City is responsible for its officers' and employee's
7 actions. By contrast, however, Defendants deny that any Plaintiff's rights have
8 been violated.
9
10

11 97. Defendants deny the allegations within paragraph 97 of the
12 Complaint.
13

14 98. Defendants deny the allegations within paragraph 98 of the
15 Complaint. Answering further, Defendants allege that the City is planning to
16 amend its sign code in early 2021. When the City does amend its sign code, that
17 will moot several aspects of this lawsuit.
18
19

20 99. Defendants deny the allegations within paragraph 99 of the
21 Complaint. Answering further, Defendants allege that many aspects of the City's
22 sign code are fully constitutional.
23
24

25 100. Defendants deny the allegations within paragraph 100 of the
26 Complaint.
27

28 101. Paragraph 101 of the Complaint does not advance any new factual
29 allegations. It merely incorporates by reference the allegations from paragraphs 1
30

1 through 100 of the Complaint. Thus, Defendants likewise incorporate the
2 substance of their answers set forth in paragraphs 1 through 100 of this pleading
3 as if those paragraphs were fully repeated within this paragraph 101.
4

5 102. Defendants deny the allegations within paragraph 102 of the
6 Complaint.
7

8 103. Defendants deny the allegations within paragraph 103 of the
9 Complaint.
10

11 104. Defendants deny the allegations within paragraph 104 of the
12 Complaint.
13

14 105. Defendants deny the allegations within paragraph 105 of the
15 Complaint.
16

17 106. Defendants deny the allegations within paragraph 106 of the
18 Complaint.
19

20 107. Defendants deny the allegations within paragraph 107 of the
21 Complaint.
22

23 108. Defendants deny the allegations within paragraph 108 of the
24 Complaint.
25

26 109. Paragraph 109 of the Complaint does not advance any new factual
27 allegations. It merely incorporates by reference the allegations from paragraphs 1
28 through 108 of the Complaint. Thus, Defendants likewise incorporate the
29
30

1 substance of their answers set forth in paragraphs 1 through 108 of this pleading
2 as if those paragraphs were fully repeated within this paragraph 109.

3
4 110. Defendants deny the broad allegation within paragraph 110 of the
5 Complaint as phrased.

6
7 111. Defendants deny the broad allegation within paragraph 111 of the
8 Complaint as phrased.

9
10 112. Defendants deny the allegations within paragraph 112 of the
11 Complaint.

12
13 113. Defendants deny the allegations within paragraph 113 of the
14 Complaint.

15
16 114. With regard to the allegations within paragraph 114 of the Complaint,
17 Defendants presently lack sufficient information to assess the relative truth or
18 falsity of the allegations regard what the Plaintiffs “desire”. Accordingly,
19 Defendants deny all of those allegations. Finally, Defendants deny all allegations
20 within the remaining sentences of said paragraph including but not limited to the
21 embedded allegation that the City has retaliated, or would retaliate, against any
22 Plaintiff.

23
24
25
26 115. Defendants deny the allegations within paragraph 115 of the
27 Complaint.

1 116. Defendants deny the allegations within paragraph 116 of the
2 Complaint.

3
4 117. Paragraph 117 of the Complaint does not advance any new factual
5 allegations. It merely incorporates by reference the allegations from paragraphs 1
6 through 116 of the Complaint. Thus, Defendants likewise incorporate the
7 substance of their answers set forth in paragraphs 1 through 116 of this pleading
8 as if those paragraphs were fully repeated within this paragraph 117.
9

10
11 118. Defendants deny as phrased the broad allegation within paragraph
12 118 of the Complaint.
13

14 119. With regard to the allegations within paragraph 119 of the Complaint,
15 Defendants deny Plaintiffs' characterization of Selah Municipal Code section
16 10.38.040 code and allege that such code section effectively speaks for itself.
17
18

19 120. With regard to the allegations within paragraph 119 of the Complaint,
20 Defendants deny Plaintiffs' characterization of Selah Municipal Code section
21 10.38.050 and allege that such code section effectively speaks for itself.
22

23 121. With regard to the allegations within paragraph 120 of the Complaint,
24 Defendants deny Plaintiffs' characterization of Selah Municipal Code sections
25 10.38.030 and 10.38.050 and allege that such code sections effectively speak for
26 themselves.
27
28
29
30

1 122. With regard to the allegations within paragraph 122 of the Complaint,
2 Defendants deny Plaintiffs' characterization of Selah Municipal Code section
3 10.38.050 and allege that such code section effectively speaks for itself.
4

5 123. Defendants deny the allegations within paragraph 123 of the
6 Complaint on the ground that the allegations are broad legal
7 conclusions/assertions. Nevertheless, Defendants deny that Selah's city-owned
8 rights-of-way are "traditional public forums" for the placement of non-political
9 signs outside of campaign season.
10

11 124. Defendants deny the allegation within paragraph 124 of the
12 Complaint on the ground that the broad allegation is a bare legal
13 conclusion/assertion. Accordingly, it is neither admitted nor denied.
14

15 125. The allegation in paragraph 125 of Plaintiffs' Complaint is a bare
16 legal conclusion/assertion. Accordingly, it is neither admitted nor denied.
17 Answering further, Defendants allege that "speech of private citizens on private
18 property" has no relevance to this case.
19

20 126. The allegation in paragraph 126 of Plaintiffs' Complaint is a bare
21 legal conclusion/assertion and it is neither admitted nor denied. Nevertheless,
22 Defendants admit that case law precedents have declared the type of durational
23 limits contained within Selah's sign code to be unconstitutional. However,
24 Defendants deny the allegation "[a]mong other things" on the basis that it is vague
25
26
27
28
29
30

1 and has no relevance to this case.

2 127. The allegations within paragraph 127 of the Complaint are bare legal
3 conclusions/assertions. Accordingly, they are neither admitted nor denied.
4

5 128. Defendants deny the allegations within paragraph 128 of the
6 Complaint as they are phrased. Answering further, Defendants admit that certain
7 aspects of the City's sign code are unconstitutional. However, Defendants deny
8 that the entirety of the City's sign code is unconstitutional, allege that the City
9 plans to amend its sign code in early 2021, and allege that amendment of the City's
10 sign code will moot several aspects of this case.
11
12

13 129. Paragraph 129 of the Complaint does not advance any new factual
14 allegations. It merely incorporates by reference the allegations from paragraphs 1
15 through 128 of the Complaint. Thus, Defendants likewise incorporate the
16 substance of their answers set forth in paragraphs 1 through 128 of this pleading
17 as if those paragraphs were fully repeated within this paragraph 129.
18
19
20
21

22 130. Defendants admit the allegations within paragraph 130 of the
23 Complaint.
24

25 131. Defendants deny the allegations within paragraph 131 of the
26 Complaint.
27

28 132. Defendants deny the allegations within paragraph 132 of the
29 Complaint.
30

1 133. Defendants deny the allegations within paragraph 133 of the
2 Complaint.

3
4 134. Defendants deny the allegations within paragraph 134 of the
5 Complaint.

6
7 135. Defendants deny the allegations within paragraph 135 of the
8 Complaint.

9
10 136. Via the preceding paragraphs 1 through 135, Defendants have
11 intended to specifically respond to each and every allegation of the Complaint. If
12 one or more allegations were mistakenly not responded to via those paragraphs,
13 Defendants hereby deny each and every heretofore-unresponded-to allegation.

14
15
16 137. To the extent necessary or advantageous, Defendants deny all aspects
17 of the Plaintiffs' "Prayer for Relief".

18
19 AFFIRMATIVE DEFENSES

20 For further answer to Plaintiffs' Complaint and as affirmative defenses
21 thereto, Defendants allege as follows:

22
23 FIRST AFFIRMATIVE DEFENSE

24
25 That one or more Plaintiffs, including but not limited to the unincorporated
26 association of S.A.F.E., lack legal standing to pursue any claim for relief in this
27 case.
28
29
30

1 SECOND AFFIRMATIVE DEFENSE

2 That there is no civil cause of action for violation of the Washington State
3 Constitution. Accordingly, Plaintiffs' claims based on alleged violations of the
4 Washington State Constitution fail to state a claim upon which relief can be
5 granted.
6

7
8 THIRD AFFIRMATIVE DEFENSE

9
10 That there is no legal basis for Plaintiffs' claim of punitive damages against
11 Defendants. Accordingly, Plaintiffs' punitive damages claim fails to state a claim
12 upon which relief can be granted.
13

14
15 FOURTH AFFIRMATIVE DEFENSE

16 That Plaintiffs' claims against Defendants Raymond and Wayman are
17 duplicative of Plaintiffs' claims against the City of Selah. Accordingly,
18 Defendants Raymond and Wayman should be dismissed.
19

20
21 FIFTH AFFIRMATIVE DEFENSE

22 That Plaintiffs' claim for declaratory relief will be moot and that declaratory
23 relief is nevertheless improper because Plaintiffs have an adequate remedy at law.
24

25
26 SIXTH AFFIRMATIVE DEFENSE

27 That the injunctive relief requested by Plaintiffs is improper because
28 Plaintiffs have an adequate remedy at law and because no Plaintiff has
29
30

1 demonstrated the likelihood of substantial and immediate irreparable injury in the
2 future.

3
4 WHEREFORE, having fully answered Plaintiffs' Complaint herein,
5 Defendants pray that the same be dismissed with prejudice, that Plaintiffs take
6 nothing thereby, and that Defendants be awarded their costs and disbursements
7 herein, including attorneys' fees pursuant to statute.
8
9

10 DATED this 22nd day of January, 2021.
11

12 By: /s/
13 CHRISTOPHER J. KERLEY, WSBA #16489
14 Evans, Craven & Lackie, P.S.
15 818 W. Riverside, Suite 250
16 Spokane, WA 99201-0910
17 Telephone (509) 455-5200
18 Fax (509) 455-3632
19 ckerley@ecl-law.com
20 *Among Attorneys for Defendants*

21 By: /s/
22 D. R. (ROB) CASE, WSBA #34313
23 Larson Berg & Perkins PLLC
24 105 North Third Street
25 Yakima, WA 98901
26 Telephone (509) 457-1515
27 Fax (509) 457-1027
28 Rob@LBPlaw.com
29 *Among Attorneys for Defendants*
30

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System which will effectuate service of a copy of such filing to the following counsel/parties of record:

Attorneys for Plaintiffs

PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Email Addresses:

Carolyn Gilbert, WSBA No. 51285	JCutler@perkinscoie.com
Joseph P. Cutler, WSBA No. 37234	CarolynGilbert@perkinscoie.com
Reina Almon-Griffin, WSBA No. 54651	RAlmon-Griffin@perkinscoie.com
Jane E. Carmody, WSBA No. 55409	JCarmody@perkinscoie.com
Jacob Stillwell, WSBA No. 48407	JStillwell@perkinscoie.com

Co-Counsel and Attorneys for Plaintiffs

American Civil Liberties Union
Washington Foundation
P.O. Box 2728
Seattle, WA 98111
Telephone: 206.624.2181

Antoinette M. Davis, WSBA No. 29281	Talner@aclu-wa.org
Nancy Talner, WSBA No. 11196	tdavis@aclu-wa.org
Crystal Pardue, WSBA No. 54371	cpardue@aclu-wa.org

DATED this 22nd day of January, 2021.

EVANS CRAVEN & LACKIE, P.S.

By s/ Christopher J. Kerley
CHRISTOPHER J. KERLEY, WSBA #16489